

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

**(DONNA HARRIS & RICHARD HARRIS)**

**(Case No. 12378)**

A hearing was held after due notice on November 4, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to place a telecommunications tower.

Findings of Fact

The Board found that the Applicants seek a special use exception to place a telecommunications tower. This application pertains to certain real property located on the east side of Hitch Pond Road approximately 0.29 miles north of Arvey Road (911 Address: 34401 Hitch Pond Road, Laurel) said properties being identified as Sussex County Tax Map Parcel Number 3-32-9.00-4.03. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from John Tracey, Esquire, a portion of the tax map of the area, an aerial photograph of the Property, miscellaneous reports from Andrew Petersohn, a site plan, and findings of fact for Case No. 11953.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Andrew Petersohn, Sue Machel, and Andrew Graubort were sworn in to give testimony. John Tracey, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Tracey stated that the Applicant requests a special use exception for a 145 feet tall monopole telecommunications tower with a 5 feet tall lightning rod.
5. The Board found that Mr. Tracey stated that the Property is located in the AR-1 district and the area is used agriculturally.
6. The Board found that Mr. Tracey stated that the Property is wooded and consists of 8.5 acres.
7. The Board found that Mr. Tracey stated that the special use exception had been previously granted but expired before the tower could be installed. The Application is identical from the previous application except that there is a slight adjustment to the access road.
8. The Board found that Mr. Tracey stated that the tower will not create any RF interference issues and the tower will meet FAA requirements.
9. The Board found that Mr. Tracey stated that the need for the tower still exists as currently 57-58% of all homes use cell phones and no longer have landlines.
10. The Board found that Mr. Tracey stated that the tower will meet County Code with lights every 50 feet.
11. The Board found that Mr. Tracey stated that the facility will be fenced in.
12. The Board found that Mr. Tracey stated that the nearest tower is approximately 3 miles away.
13. The Board found that Mr. Tracey stated that no variances are required and the tower will meet all setback requirements.

14. The Board found that Mr. Tracey stated that approving this Application will not substantially affect adversely the uses of adjacent and neighboring properties.
15. The Board found that Mr. Petersohn testified that there is a gap in reliable coverage which this tower will help to fill and he used propagation models for predicting coverage. He believes that, if the special use exception is approved, this tower will help increase the coverage in this area.
16. The Board found that Mr. Petersohn testified that the F.C.C. has specific standards and this facility will be well below the applicable limits. His emissions analysis shows that this facility will emit 1.5% of the permitted emissions under the F.C.C. allowances.
17. The Board found that Mr. Graubort testified that this Application is almost identical to the Application which was approved in 2017 and the only change is a shift in the location of the tower on the property moving it closer to the agricultural operation to the north.
18. The Board found that Mr. Graubort testified that there will be limited tree removal and trimming on the property to accommodate the tower because the tower will be located in an existing tree clearing.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a special use exception because the telecommunication tower will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
  - a. The Property is located in a rural area and the tower will be difficult to see from most neighboring properties as it will be screened by nearby trees. The Property is also a large property consisting of 8.42 acres.
  - b. No objections from any neighbors about the proposed tower have been noted in the record.
  - c. The Applicant demonstrated that the proposed tower will not emit any noise or smell and that the radio frequency emissions will be well below the maximum emissions permitted under FCC regulations.
  - d. The proposed tower will fill a gap in coverage in the Applicant's cell phone service and should enhance the service in the areas around the tower which would benefit neighboring and adjacent properties.
  - e. No evidence was presented which would demonstrate that the tower would have a substantial adverse effect on neighboring and adjacent properties.
21. The Applicant also demonstrated that it met the requirements under Sussex County Code Section § 115-194.2 for a telecommunications tower. The Applicant submitted appropriate documentation demonstrating compliance with § 115-194.2.
  - a. The Applicant submitted documentation showing that existing structures within a two (2) mile radius of the Property were unavailable for collocation.
  - b. The Applicant substantiated a need for the tower on the Property. Testimony presented by the Applicant demonstrated that the proposed tower will help fill a gap and coverage which has arisen.
  - c. The Applicant demonstrated that the proposed tower will be designed to accommodate at least two (2) additional PCS / cellular platforms.
  - d. The proposed tower will be set back from adjoining property lines by a minimum of one-third (1/3) the height of the tower.
  - e. Pad sites, ground equipment structures, and guy wires shall be surrounded by a minimum six (6) feet tall fence as shown on the documentation submitted by the Applicant.

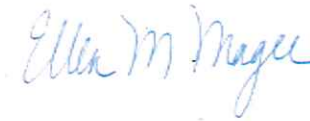
- f. The Applicant demonstrated that the tower shall have warning lights which will meet all applicable requirements of the Federal Communications Commission and the Federal Aviation Administration

The Board granted the special use exception finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception was approved. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date January 7, 2020